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MORGAN HOWARTH

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MORGAN HOWARTH,

Plaintiff,

v.

SHRUBHUB, LLC and SCOTT
LAWRENCE HUTCHEON,

Defendants.

Case No.: 8:22-cv-02129

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT (INJUNCTIVE
RELIEF DEMANDED)**

Demand for Jury Trial

Plaintiff MORGAN HOWARTH by and through his undersigned counsel,
brings this Complaint against Defendants SHRUBHUB, LLC and SCOTT
LAWRENCE HUTCHEON for damages and injunctive relief, and in support thereof
states as follows:

SUMMARY OF THE ACTION

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3 1. Plaintiff MORGAN HOWARTH (“Howarth”) brings this action for
4 violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and
5 distribute Howarth's original copyrighted work of authorship.

6 2. Based in the Washington D.C. area, Howarth has been a photographer for
7 over 25 years and focuses on interior and architecture work. His rich and illustrative
8 style brings architecture to life by combining a multitude of separately lit images into
9 one perfect shot. Howarth has worked as a photographer for a multitude of national
10 clients including Timex, Sears Catalog, The Lenox Hotel, Cole Haan Shoes, GH Bass
11 Shoes, Timberland Shoe, CBS, and Home & Design Magazine, and has been exposed
12 to many beautiful people and places throughout his career. However, he still considers
13 the best part of any assignment to be the client’s final “Wow!”

14 3. Howarth uses a combination of tungsten, daylight, and strobe light to
15 create the best possible natural looking light to suit the needs of each room or scene.
16 This process takes several different exposures and lighting set-ups per image which
17 are then combined into one Hi-Res image.

18 Defendant SHRUBHUB, LLC (“ShrubHub”) is the fastest-growing online
19 design company in the world (according to its Website). ShrubHub has a team of
20 project managers and 24/7 customer support offering 3D landscaping design,
21 shopping lists with all elements and décor used in the design, and door-to-door
22 shipping from its exclusive nursery, as well as recommendations for customers’
23 locations’ top contractors. At all times relevant herein, ShrubHub operated the internet
24 website located at the URL www.shrubhub.com (the “Website”).

25 Defendant SCOTT LAWRENCE HUTCHEON (“Hutcheon”) is, upon
26 information and belief, the registrant and owner of the Website.

27 Defendants ShrubHub and Hutcheon are collectively referred to herein as
28 “Defendants.”

1 Howarth alleges that Defendants copied Howarth's copyrighted Work from the
2 Internet in order to advertise, market and promote their business activities.
3 Defendants committed the violations alleged in connection with Defendants' business
4 for purposes of advertising and promoting sales to the public in the course and scope
5 of the Defendants' business.

6
7 **JURISDICTION AND VENUE**

8 8. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

9 9. This Court has subject matter jurisdiction over these claims pursuant to
10 28 U.S.C. §§ 1331, 1338(a).

11 10. Defendants are subject to personal jurisdiction in California.

12 11. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and
13 1400(a) because the events giving rise to the claims occurred in this district,
14 Defendants engaged in infringement in this district, Defendants reside in this district,
15 and Defendants are subject to personal jurisdiction in this district.

16
17 **DEFENDANTS**

18 12. ShrubHub, LLC is a California Limited Liability Company, with its
19 principal place of business at 2885 Rounsevel Terrace, Laguna Beach, California,
20 92651, and can be served by serving its Registered Agent, Mr. Scott Hutcheon, at the
21 same address.

22 Scott Lawrence Hutcheon is an individual residing in Orange county, state of
23 California and can be served at 2855 Rounseval Terrace, Laguna Beach, California,
24 92651.
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THE COPYRIGHTED WORK AT ISSUE

In 2017, Howarth created the photograph entitled “6314_Georgetown_House_Rear_LFT_F.jpg,” which is shown below and referred to herein as the “Work.”



15. Howarth registered the Work with the Register of Copyrights on August 29, 2017 and was assigned the registration number VA 2-064-958. The Certificate of Registration is attached hereto as **Exhibit 1**.

At the time Howarth created the Work, Howarth applied copyright management information to the Work consisting of the words “© MORGAN HOWARTH” to the center of the Work.

At all relevant times Howarth was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANTS

18. Defendants have never been licensed to use the Work at issue in this action for any purpose.

19. On a date after the Work at issue in this action was created, but prior to the filing of this action, Defendants copied the Work.

20. On or about March 9, 2022, Howarth discovered the unauthorized use of his Work in a blog article entitled “The Pros and Cons of Building Your Own Pool.”

21. Defendants copied Howarth's copyrighted Work without Howarth's permission.

22. After Defendants copied the Work, they made further copies and distributed the Work on the Internet to promote the sale of goods and services as part of their landscaping design business.

23. Defendants copied and distributed Howarth's copyrighted Work in connection with Defendants' business for purposes of advertising and promoting Defendants' business, and in the course and scope of advertising and selling products and services.

24. Howarth's works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

25. Defendants committed copyright infringement of the Work as evidenced by the documents attached hereto as **Exhibit 2**.

26. Howarth never gave Defendants permission or authority to copy, distribute or display the Work at issue in this case.

27. Howarth notified Defendants of the allegations set forth herein on April 12, 2022 and May 2, 2022. To date, Defendants have failed to respond to Howarth's Notices.

When Defendants copied and displayed the Work at issue in this case, Defendants removed Howarth's copyright management information from the Work.

1 29. Howarth never gave Defendants permission or authority to remove
2 copyright management information from the Work at issue in this case.

3
4 **COPYRIGHT INFRINGEMENT**

5 30. Howarth incorporates the allegations of paragraphs 1 through 29 of this
6 Complaint as if fully set forth herein.

7 31. Howarth owns a valid copyright in the Work at issue in this case.

8 32. Howarth registered the Work at issue in this case with the Register of
9 Copyrights pursuant to 17 U.S.C. § 411(a).

10 33. Defendants copied, displayed, and distributed the Work at issue in this
11 case and made derivatives of the Work without Howarth's authorization in violation of
12 17 U.S.C. § 501.

13 34. Defendants performed the acts alleged in the course and scope of its
14 business activities.

15 35. Defendants' acts were willful.

16 36. Howarth has been damaged.

17 37. The harm caused to Howarth has been irreparable.

18
19 **COUNT II**
20 **REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION**

21 38. Howarth incorporates the allegations of paragraphs 1 through 29 of this
22 Complaint as if fully set forth herein.

23 39. The Work at issue in this case contains copyright management
24 information ("CMI").

25 40. Defendants knowingly and with the intent to enable or facilitate
26 copyright infringement, removed CMI from the Work at issue in this action in
27 violation of 17 U.S.C. § 1202(b).
28

41. Defendants committed these acts knowing or having reasonable grounds to know that they will induce, enable, facilitate or conceal infringement of Howarth's rights in the Work at issue in this action protected under the Copyright Act.

42. Defendants caused, directed and authorized others commit these acts knowing or having reasonable grounds to know that they will induce, enable, facilitate or conceal infringement of Howarth's rights in the Work at issue in this action protected under the Copyright Act.

43. Howarth has been damaged.

44. The harm caused to Howarth has been irreparable.

WHEREFORE, the Plaintiff Morgan Howarth prays for judgment against the Defendants ShrubHub, LLC and Scott Lawrence Hutcheon that:

a. Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501, 1203;

b. Defendants be required to pay Plaintiff his actual damages and Defendants' profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. §§ 504, 1203;

Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

e. Plaintiff be awarded pre- and post-judgment interest; and

f. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Morgan Howarth hereby demands a trial by jury of all issues so triable.

DATED: November 23, 2022

Respectfully submitted,

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/s/ Jonah A. Grossbardt
JONAH A. GROSSBARDT
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SRIPLAW
Attorneys for Plaintiff Morgan Howarth